

REMARKS

Claims 1, 6 – 12, 15, 19, 21, 27, 30 and 31 are pending herein. Claim 1 has been amended to include the subject matter of allowable claim 29. Claim 7 has been amended to address matters of form. Claims 28 and 29 have been cancelled without prejudice or disclaimer. Claim 30 has been amended in light of the cancellation of claim 29.

Previously withdrawn claims 22 and 24 – 26 have been cancelled without prejudice or disclaimer. Applicants presently intend to file a divisional application for the previously withdrawn claims, and thus reserves the right under 35 U.S.C. §121.

Applicants appreciate the Examiner's indication that claims 15, 19, 21, and 31 are allowed and that claims 28-30 would be allowable if rewritten in independent form.

Independent claim 1 stands rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 6,293,961 to Schwartz et al. ("Schwartz") in view of U.S. Patent Application Publication No. 2003/0088272 filed by Smith ("Smith"). This rejection is obviated, however, by the above amendments to the claim 1. Withdrawal of this rejection is therefore respectfully requested in view of these amendments and the discussion that follows below.

With reference to the Remarks made in Applicant's last reply, which are again herein incorporated by reference, Applicant maintains that the subject matter in the pending claims is patentable over Schwartz, Smith, and their combination as proposed in the present Office Action. However, to expedite allowance of the remaining claims Applicant nonetheless amends independent claim 1 with the subject matter recited in dependent claim 29, which is identified as allowable subject matter in the present Office Action. (See, the Office Action at page 6).

Amended independent claim 1 now recites, in pertinent part:

wherein the gripping portions form a top surface portion of the transverse aperture that encloses a portion of the transverse aperture in the proximal direction, and

wherein the gripping portions extend over and beyond the transverse aperture while the suture anchor is in the open position so the transversely oriented section of each suture is prevented from exiting the aperture longitudinally. (See, the Amendments to the Claims).

These amendments add no new matter. Support for the subject matter recited in amended independent claim 1 is found at least in allowable dependent claim 29¹ (now cancelled). Moreover, an example of the "gripping portions" and "the top surface portion of the transverse aperture" can be found as illustrated in Fig. 1, and described in paragraph [0029] of the pending application (See, e.g., U.S. Patent Application Publication No. 2004/0133239).

For at least these reasons, amended independent claim 1 is believed to be allowable over Schwartz and Smith. Claims 6-12, 27, and 30 are also believed to be allowable over Schwartz and Smith, at least by virtue of their respective dependencies on independent claim 1, as well as for their added features. Thus, favorable reconsideration and withdrawal of the present rejections are therefore respectfully requested.

Furthermore, and with respect to the claim rejections argued by Applicant herein, Applicant's selective treatment and emphasis of certain claims in the application should not be taken as an indication that Applicant believes the Examiner's unaddressed claim rejections are otherwise sufficient. Applicant expressly reserves the right to present arguments traversing the propriety of the unaddressed claim rejections later in the prosecution of this or another application.

Further with respect to the claim rejections argued by Applicant herein, while Applicant may have highlighted a particular claim element of a claim for purposes of demonstrating insufficiency of the examination on the part of the Examiner, Applicant's

¹ Cancelled claim 29 recited "The suture anchor of claim 1, further comprising a top surface portion of the transverse aperture enclosing a portion of the transverse aperture in the proximal direction, wherein the top surface portion is at least on gripping portion extending over and beyond the transverse aperture while the suture anchor is in the open position so the transversely oriented section of each suture is prevented from exiting the aperture longitudinally."

highlighting of a particular claim element for such purpose should not be taken to indicate that Applicant has asserted an argument in support of patentability that a particular claim element constitutes the sole basis for patentability out of the context of the various combinations of elements of the claim or claims in which it is present. Applicant maintains the right here forward to assert that each claim is patentable by reason of any patentable combination recited therein.

CONCLUSIONS

In view of the foregoing remarks, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for Allowance. A Notice of Allowance for claims 1, 6 – 12, 15, 19, 21, 27, 30, and 31 is earnestly solicited.

Applicant reserves all rights and arguments with respect to all such other limitations and distinctions not expressly noted above. Moreover, to the extent that any claim amendments made above constitute a narrowing of the scope of claimed subject matter, such narrowing should not be construed as admitting the merits of any of the claim rejections. Applicant's failure (if at all) to expressly address above any particular statement or argument by the Examiner should not be construed as an admission or acquiescence that such statement or argument is accurate or proper.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicant's undersigned representatives at the below listed telephone number.

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